

AMENDED IN ASSEMBLY AUGUST 25, 2000

AMENDED IN ASSEMBLY JULY 6, 2000

AMENDED IN ASSEMBLY JUNE 21, 2000

AMENDED IN SENATE JULY 14, 1999

AMENDED IN SENATE JUNE 24, 1999

AMENDED IN SENATE JUNE 21, 1999

AMENDED IN SENATE JUNE 14, 1999

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**SENATE BILL**

**No. 1146**

**Introduced by Senator Burton**  
**(Principal coauthor: Senator Polanco)**  
**(Coauthors: Senators Escutia, Haynes, and Karnette)**  
(Coauthors: Assembly Members Baugh, Cardoza, and  
Granlund)

February 26, 1999

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An act to amend Section 43104 of, and to add Sections 39027.3 and 43105.5 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1146, as amended, Burton. Motor vehicles: pollution control devices.

Existing law authorizes the State Air Resources Board to adopt and implement ~~emission~~ *emissions* standards for new motor vehicles to control emissions from those vehicles.

This bill would require the state board, for all 1994 and later model-year motor vehicles that are equipped with on board diagnostic systems and that are certified in accordance with specified test procedures, to adopt regulations that would require motor vehicle manufacturers to take specified actions to make available information relating to motor vehicle emissions monitoring and testing, and diagnostic systems, as prescribed. The bill would provide for the imposition of reasonable business conditions as a condition of the disclosure of information determined to be a trade secret, and would authorize a court to issue a protective order concerning that information.

The bill would require the executive officer of the state board, if he or she obtains credible evidence of a motor vehicle manufacturer's failure to comply with any of the requirements imposed by those regulations, to issue a notice of ~~noncompliance to comply~~ to the manufacturer *and would require the manufacturer to submit a compliance plan, as specified.* The bill would ~~permit the motor vehicle manufacturer to request a public~~ *require an administrative* hearing ~~before the state board to contest the notice of noncompliance to be conducted by a hearing officer if the manufacturer contests the notice to comply or the executive officer rejects the compliance plan~~ within a specified time period. The bill would ~~authorize the state board, if~~ *require* the motor vehicle manufacturer ~~fails~~ to correct the violation within 30 days from the date of ~~the state board finding, to impose a specified finding by the hearing officer or be subject to a civil penalty on the manufacturer in an amount up to not to exceed \$25,000 per day per violation.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature hereby finds and
- 2 declares all of the following:
- 3 (a) There are over 26 million registered motor
- 4 vehicles in California, and those vehicles are relied upon

1 heavily by California residents to conduct their everyday  
2 activities.

3 (b) The use of those motor vehicles results in hundreds  
4 of tons of pollutants being emitted into California's air  
5 every day, significantly affecting air quality and public  
6 health and safety. To prevent unnecessary pollution, it is  
7 in the best interests of this state to ensure that the ability  
8 of California motorists to obtain service, repair, or  
9 replacement of faulty emissions-related components of  
10 their motor vehicles is not limited by the arbitrary  
11 withholding of service, repair, or parts information by  
12 motor vehicle manufacturers.

13 (c) Recent emissions standards adopted and  
14 implemented by the State Air Resources Board for motor  
15 vehicles manufactured after 1993 have resulted in the  
16 development by vehicle manufacturers of "on board  
17 diagnostic computers," that interface with the many  
18 component parts of a vehicle's emissions control system.  
19 Essential service, repair, and parts information and tools  
20 for interfacing with a vehicle's on board diagnostic  
21 computer system may not be readily available to  
22 independent automotive repair technicians and facilities.  
23 Accordingly, consumers may be restricted to having the  
24 service and repair of faulty emissions-related components  
25 of a motor vehicle performed only by franchised  
26 dealerships, and consumers may be also forced to  
27 purchase replacement parts manufactured solely by or on  
28 behalf of the vehicle manufacturer. This restriction of  
29 consumer choice and options is contrary to the history of  
30 automotive repair, which saw the advent of independent  
31 repair technicians and facilities and independent  
32 aftermarket parts manufacturers as healthy market  
33 competitors to vehicle manufacturers and their  
34 dealerships.

35 (d) The withholding of essential service, repair, and  
36 parts information and tools by vehicle manufacturers  
37 from independent automotive repair technicians and  
38 independent aftermarket parts manufacturers may result  
39 in improper and needlessly costly repairs that could also

1 endanger the public and result in anticompetitive effects  
2 harmful to the best interests of the state.

3 (e) It is the intent of the Legislature in enacting this  
4 act during the 2000 portion of the 1999–2000 Regular  
5 Session to assure and stimulate competition in the service  
6 and repair of motor vehicles, including emissions systems,  
7 and in the availability of parts for those repairs. Further,  
8 it is the important policy of this state to encourage  
9 competition so that consumers have choices available to  
10 them in the service, repair, and parts used in the service  
11 or repair of motor vehicles.

12 SEC. 2. Section 39027.3 is added to the Health and  
13 Safety Code, to read:

14 39027.3. (a) “Bidirectional control” means the  
15 capability of a diagnostic tool to send messages on the data  
16 (bus) that temporarily overrides the module’s control  
17 over a sensor or actuator and gives control to the  
18 diagnostic tool operator. Bidirectional controls do not  
19 create permanent changes to engine or component  
20 calibrations.

21 (b) “Covered person” means any person engaged in  
22 the business of service or repair of motor vehicles who is  
23 licensed or registered ~~by~~ *with* the Bureau of Automotive  
24 Repair, *pursuant to Section 9884.6 of the Business and*  
25 *Professions Code*, to conduct that business, or who is  
26 engaged in the manufacture or remanufacture of  
27 emissions-related motor vehicle parts for those motor  
28 vehicles.

29 (c) “Data stream information” means information  
30 that originates within the vehicle by a module or  
31 intelligent sensors including, but not limited to, a sensor  
32 that contains and is controlled by its own module and  
33 transmitted between a network of modules and  
34 intelligent sensors connected in parallel with either one  
35 or two communication wires. The information is  
36 broadcast over communication wires for use by other  
37 modules such as chassis or transmissions to conduct  
38 normal vehicle operation or for use by diagnostic tools.  
39 Data stream information does not include engine  
40 calibration-related information.



(d) “Emissions-related motor vehicle information” means information regarding any of the following:

(1) Any original equipment system, component, or part that controls emissions.

(2) Any original equipment system, component, or part associated with the powertrain system including, but not limited to, the fuel system and ignition system.

(3) Any original equipment system or component that is likely to impact emissions, including, but not limited to, the transmission system.

(e) “Emissions-related motor vehicle part” means any direct replacement automotive part or any automotive part certified by executive order of the state board that may affect emissions from a motor vehicle, including replacement parts, consolidated parts, rebuilt parts, remanufactured parts, add-on parts, modified parts, and specialty parts.

(f) “Enhanced data stream information” means data stream information that is specific for an original equipment manufacturer’s brand of tools and equipment.

(g) “Enhanced diagnostic tool” means a diagnostic tool that is specific to the original equipment manufacturer’s vehicles.

SEC. 3. Section 43104 of the Health and Safety Code is amended to read:

43104. For the certification of new motor vehicles or new motor vehicle engines, the state board shall adopt, by regulation, test procedures and any other procedures necessary to determine whether the vehicles or engines are in compliance with the ~~emission~~ *emissions* standards established pursuant to Section 43101. The state board shall base its test procedures on federal test procedures or on driving patterns typical in the urban areas of California.

SEC. 4. Section 43105.5 is added to the Health and Safety Code, to read:

43105.5. (a) For all 1994 and later model-year motor vehicles equipped with on board diagnostic systems (OBD’s) and certified in accordance with the test procedures adopted pursuant to Section 43104, the state

1 board, not later than January 1, 2002, shall adopt  
2 regulations that require a motor vehicle manufacturer to  
3 do all of the following to the extent not limited or  
4 prohibited by federal law (the regulations adopted by the  
5 state board pursuant to this provision may include subject  
6 matter similar to the subject matter included in  
7 regulations adopted by the United States Environmental  
8 Protection Agency):

9 (1) Make available, within a reasonable period of time,  
10 and by reasonable business means, including, but not  
11 limited to, use of the Internet, as determined by the state  
12 board, to all covered persons, the full contents of all  
13 manuals, technical service bulletins, and training  
14 materials regarding emissions-related motor vehicle  
15 information that is made available to their franchised  
16 dealerships.

17 (2) Make available for sale to all covered persons the  
18 manufacturer's emissions-related enhanced diagnostic  
19 tools, and make emissions-related enhanced data stream  
20 information and bidirectional controls related to tools  
21 available in electronic format to equipment and tool  
22 companies.

23 (3) If the motor vehicle manufacturer uses  
24 reprogrammable computer chips in its motor vehicles,  
25 provide equipment and tool companies with the  
26 information that is provided by the manufacturer to its  
27 dealerships to allow those companies to incorporate into  
28 aftermarket tools the same reprogramming capability.

29 (4) Make available to all covered persons, within a  
30 reasonable period of time, a general description of their  
31 on board diagnostic systems (OBD II) for the 1996 and  
32 subsequent model-years, which shall contain the  
33 information described in this paragraph. For each  
34 monitoring system utilized by a manufacturer that  
35 illuminates the OBD II malfunction indicator light, the  
36 motor vehicle manufacturer shall provide all of the  
37 following:

38 (A) A general description of the operation of the  
39 monitor, including a description of the parameter that is  
40 being monitored.



1 (B) A listing of all typical OBD II diagnostic trouble  
2 codes associated with each monitor.

3 (C) A description of the typical enabling conditions for  
4 each monitor to execute during vehicle operation,  
5 including, but not limited to, minimum and maximum  
6 intake air and engine coolant temperature, vehicle speed  
7 range, and time ~~since~~ after engine startup.

8 (D) A listing of each monitor sequence, execution  
9 frequency, and typical duration.

10 (E) A listing of typical malfunction thresholds for each  
11 monitor.

12 (F) For OBD II parameters for specific vehicles that  
13 deviate from the typical parameters, the OBD II  
14 description shall indicate the deviation and provide a  
15 separate listing of the typical value for those vehicles.

16 (G) The information required by this paragraph shall  
17 not include specific algorithms, specific software code, or  
18 specific calibration data beyond that required to be made  
19 available through the generic scan tool in federal and  
20 California on board diagnostic regulations.

21 (5) Not utilize any access or recognition code or any  
22 type of encryption for the purpose of preventing a vehicle  
23 owner from using an emissions-related motor vehicle part  
24 with the exception of the powertrain control modules,  
25 engine control modules, and transmission control  
26 modules, that has not been manufactured by that  
27 manufacturer or any of its original equipment suppliers.

28 (6) Provide to all covered persons information  
29 regarding initialization procedures relating to  
30 immobilizer circuits or other lockout devices to  
31 reinitialize vehicle on board computers that employ  
32 integral vehicle security systems if necessary to repair or  
33 replace an emissions-related part, or if necessary for the  
34 proper installation of vehicle on board computers that  
35 employ integral vehicle security systems.

36 (7) All information required to be provided to covered  
37 persons by this section shall be provided, for fair,  
38 reasonable, and nondiscriminatory compensation, in a  
39 format that is readily accessible to all covered persons, as  
40 determined by the state board.

1 (b) Any information required to be disclosed pursuant  
2 to a final regulation adopted under this section that the  
3 motor vehicle manufacturer demonstrates to a court, on  
4 a case-by-case basis, to be a trade secret pursuant to the  
5 Uniform Trade Secret Act contained in Title 5  
6 (commencing with Section 3426) of Part 1 of Division 4  
7 of the Civil Code, shall be exempt from disclosure, unless  
8 the court, upon the request of a covered person seeking  
9 disclosure of the information, determines that the  
10 disclosure of the information is necessary to mitigate  
11 anticompetitive effects. In making this determination,  
12 the court shall consider, among other things, the practices  
13 of any motor vehicle manufacturer that results in the  
14 fullest disclosure of information listed in paragraph (4) of  
15 subdivision (a). In actions subject to this subdivision, the  
16 court shall preserve the secrecy of an alleged trade secret  
17 by reasonable means, which may include granting a  
18 protective order in connection with discovery  
19 proceedings, holding an in-camera hearing, sealing the  
20 record of the action, or ordering any person involved in  
21 the litigation not to disclose an alleged trade secret  
22 without prior court approval.

23 (c) If information is required to be disclosed by a  
24 motor vehicle manufacturer pursuant to subdivision (b),  
25 the court shall allow for the imposition of reasonable  
26 business conditions as a condition of disclosure, and may  
27 include punitive sanctions for the improper release of  
28 information that is determined to be a trade secret to a  
29 competitor of the manufacturer. The court shall also  
30 provide for fair, reasonable, and nondiscriminatory  
31 compensation to the motor vehicle manufacturer for the  
32 disclosure of information determined by the court to be  
33 a trade secret and required to be disclosed pursuant to  
34 subdivision (b). The court shall provide for the  
35 dissemination of trade secret information required to be  
36 disclosed pursuant to subdivision (b) through licensing  
37 agreements and the collection of reasonable licensing  
38 fees. If the court determines that disclosure of any of the  
39 information required to be disclosed under subdivision  
40 (b) constitutes a taking of personal property, a jury trial



1 shall be held to determine the amount of compensation  
2 for that taking, unless waived by the motor vehicle  
3 manufacturer.

4 (d) The state board shall periodically conduct surveys  
5 to determine whether the information requirements  
6 imposed by this section are being fulfilled by actual field  
7 availability of the information.

8 ~~(e) If the executive officer of the state board obtains~~  
9 ~~credible evidence that a motor vehicle manufacturer has~~  
10 ~~failed to comply with any of the requirements of this~~  
11 ~~section or the regulations adopted by the state board, the~~  
12 ~~state board shall issue a notice to the manufacturer~~  
13 ~~warning of that noncompliance. The vehicle~~  
14 ~~manufacturer may request a public hearing before the~~  
15 ~~state board within 30 days from the date of the notice of~~  
16 ~~violation to contest that notice of violation. If, after the~~  
17 ~~hearing, the state board finds that the motor vehicle~~  
18 ~~manufacturer has failed to comply with any of the~~  
19 ~~requirements of this section or the regulations adopted by~~  
20 ~~the state board, and the manufacturer fails to correct the~~  
21 ~~violation within 30 days from the date of the state board~~  
22 ~~finding, the state board shall impose a civil penalty on the~~  
23 ~~manufacturer in an amount up to twenty-five thousand~~  
24 ~~dollars (\$25,000) per day per violation until the violation~~  
25 ~~is corrected. The state board may provide additional time~~  
26 ~~for compliance prior to imposing a civil penalty if the~~  
27 ~~state board determines that the violation cannot be~~  
28 ~~remedied within 30 days of the state board's finding that~~  
29 ~~a violation has occurred.~~

30 ~~(f) The Department of Consumer Affairs, in~~  
31 ~~coordination with the state board and the Bureau of~~  
32 ~~Automotive Repair, shall, through the year 2009, report~~  
33 ~~annually to the Legislature on the extent to which the~~  
34 ~~implementation of this act enacted during the 2000~~  
35 ~~portion of the 1999-2000 Regular Session is effective in~~  
36 ~~furthering the intent and policy contained in Section 1 of~~  
37 ~~this act.~~

38 ~~(g)~~

39 *(e) If the executive officer of the state board obtains*  
40 *credible evidence that a motor vehicle manufacturer has*

1 failed to comply with any of the requirements of this  
2 section or the regulations adopted by the state board, the  
3 executive officer shall issue a notice to comply to the  
4 manufacturer. Not later than 30 days after issuance of the  
5 notice to comply, the vehicle manufacturer shall submit  
6 to the executive officer a compliance plan, unless within  
7 that 30 day period the manufacturer requests an  
8 administrative hearing to contest the basis or scope of the  
9 notice to comply in accordance with subdivision (f). The  
10 executive officer shall accept the compliance plan if it  
11 provides adequate demonstration that the manufacturer  
12 will come into compliance with this section and the  
13 board's implementing regulations within 45 days  
14 following submission of the plan. However, the executive  
15 officer may extend the compliance period if the executive  
16 officer determines that the violation cannot be remedied  
17 within that period.

18 (f) If the motor vehicle manufacturer contests a notice  
19 to comply pursuant to subdivision (e) or the executive  
20 officer rejects the compliance plan submitted by the  
21 manufacturer, an administrative hearing shall be  
22 conducted by a hearing officer appointed by the state  
23 board, in accordance with procedures established by the  
24 state board. The hearing procedures shall provide the  
25 manufacturer and any other interested party at least 30  
26 days notice of the hearing. If, after the hearing, the  
27 hearing officer appointed by the state board finds that the  
28 motor vehicle manufacturer has failed to comply with  
29 any of the requirements of this section or the regulations  
30 adopted by the state board, and the manufacturer fails to  
31 correct the violation within 30 days from the date of the  
32 finding, the hearing officer may impose a civil penalty  
33 upon the manufacturer in an amount not to exceed  
34 twenty-five thousand dollars (\$25,000) per day per  
35 violation until the violation is corrected, as determined in  
36 accordance with the hearing procedures established by  
37 the state board. The hearing procedures may provide  
38 additional time for compliance prior to imposing a civil  
39 penalty. If so, the hearing officer may grant additional  
40 time for compliance if he or she determines that the

1 violation cannot be remedied within 30 days of the  
2 finding that a violation has occurred.

3 (g) The state board, in consultation with the  
4 Department of Consumer Affairs, shall, through the year  
5 2009, report annually to the Legislature on the extent to  
6 which the implementation of this act enacted during the  
7 2000 portion of the 1999–2000 Regular Session is effective  
8 in furthering the intent and policy of this act.

9 (h) Nothing in this section is intended to authorize the  
10 infringement of intellectual property rights embodied in  
11 United States patents, trademarks, or copyrights, to the  
12 extent those rights may be exercised consistently with  
13 any other federal laws.

